

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES
EMERGENCY ADOPTION OF 28 TAC §5.4203

1. INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC §5.4203 on an emergency basis, effective immediately. This rule concerns good cause extensions to deadlines that are part of the claim-handling process for claims filed under a Texas Windstorm Insurance Association (TWIA) policy. This adoption is made under Government Code §2001.034, concerning Emergency Rulemaking, and §2001.036, concerning Effective Date of Rules; Effect of Filing with Secretary of State.

2. REASONED JUSTIFICATION FOR EMERGENCY ADOPTION OF §5.4203. Governor Greg Abbott issued a proclamation declaring a disaster due to the effects of Hurricane Harvey, a weather-related event that occurred August 25 through August 31, 2017, and President Donald Trump issued a major disaster declaration and ordered federal aid to supplement state and local recovery efforts in the area affected by Hurricane Harvey.

Section 5.4203 implements the commissioner's authority to extend, for good cause, the deadlines by which TWIA must request information on a claim from a claimant and accept or deny a claim. TDI finds that immediate implementation of this extension of deadlines is necessary to avoid imminent peril to the economic welfare of the state resulting from the extensive damage caused by Hurricane Harvey, and the number of resulting insurance claims TWIA must adjust following this catastrophic event.

TWIA is the residual insurer of last resort for windstorm and hail insurance coverage in designated parts of the seacoast territory for those unable to obtain wind and hail insurance in the private market. Under TWIA's governing statute, Insurance Code §2210.001, the Legislature establishes that "adequate windstorm and hail insurance is necessary to the economic welfare of this state."

During Hurricane Harvey approximately 225,000 residential and 9,000 commercial TWIA policies were in effect. As of September 18, 2017, TWIA had received 55,851 residential property claims and 2,290 commercial property claims for losses caused by Hurricane Harvey.

Insurance Code Chapter 2210, Subchapter L-1, governs claims under a TWIA policy and the process by which TWIA and claimants must resolve disputes over claims. Insurance Code Chapter 542, Subchapter B, which governs claims and the prompt payment of claims for most insurers, does not apply to TWIA. Under Insurance Code §2210.581, the commissioner may, by rule and for good cause, extend

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any deadline in Subchapter L-1. Hurricane Harvey is the first major hurricane affecting TWIA since Subchapter L-1 was enacted in 2011.

Existing rules provide a means for TWIA or claimants to request, for good cause, extension of deadlines related to appraisal and mediation and for claimants to request additional time to file a claim with TWIA, also for good cause. However, existing rules do not provide a means to extend the deadlines by which TWIA must request information on a claim from a claimant and accept or deny a claim.

As noted, TWIA has received approximately 58,127 residential property claims and 2,371 commercial property claims from Hurricane Harvey. This has stressed TWIA's resources and those of other insurers, who are also facing an elevated number of claims. Under Insurance Code §542.059, TDI has granted a request to extend the claim-handling deadlines in Chapter 542, Subchapter B, for insurers subject to that subchapter, but this extension does not assist TWIA or those who have filed claims with TWIA.

Accurate adjustment of claims is necessary to enable Texans to focus on recovery. While ideally all claims are adjusted quickly, in an event such as Hurricane Harvey, claim-adjusting resources are in high demand. Qualified adjusters, especially for complex claims, may be in short supply. Regardless of the number of adjusters available, complex claims may take significant time to adjust accurately. The sheer number of claims may make it difficult or impossible for an insurer to accurately adjust all claims within the statutory deadlines.

Without an extension of time to accept or deny a claim or to request information from a claimant, TWIA could be at risk of not being able to adjust claims accurately. If, in an attempt to comply with the statutory time periods, TWIA adjusts claims inaccurately, then some claimants will not receive the claim payments to which they are entitled and others will receive excess payments. Providing a mechanism to grant TWIA additional time is necessary to help ensure that TWIA adjusts claims accurately and its funds are used to pay claims.

This rule will establish a transparent process for extensions of TWIA's claim-handling deadlines to accommodate the volume of claims resulting from Hurricane Harvey and the resultant strain on resources. Failure to provide TWIA a means to receive additional time to adjust claims accurately would jeopardize TWIA's purpose to provide an adequate windstorm and hail insurance market in the seacoast territory. Accurate and timely claim adjustment is integral to providing adequate insurance. Because adequate windstorm and hail insurance is necessary to the economic welfare of the state, it is necessary to adopt §5.4203 on an emergency basis to prevent an imminent peril to the public welfare.

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Insurance Code §2210.581 does not include a definition of good cause. Therefore, §5.4203(a) defines good cause for the purpose of extending the deadlines in Insurance Code §2210.573(b) and (d). The definition is adopted in order to create a reasonable, objective standard.

Under §2210.573(b), TWIA must ask a claimant for information necessary to determine whether to accept or deny a claim not later than the 30th day after the claim is filed. Under §2210.573(d), TWIA must accept or deny a claim, either in full or in part, not later than 60 days after it gets notice of the claim or receives additional information it has requested from the claimant.

Section 5.4203(b) provides that the commissioner may extend the deadlines under Insurance Code §2210.573(b) and (d) if TWIA shows good cause and also in the absence of a request from TWIA if the commissioner determines good cause exists. Subsection (d) provides that the commissioner may use any additional information the commissioner deems appropriate when determining if good cause exists under §5.4203. Sections §5.4203(b) and (d) give the commissioner flexibility to determine that good cause exists without relying solely on TWIA's request.

Section 5.4203(c) requires a request under §5.4203 to include information useful for the commissioner to make a determination.

Section 5.4203(e) states that for claims filed in a particular catastrophe year, extensions granted under Insurance Code §2210.581 may not, in total, exceed 120 days.

Decisions to grant or deny requests for extension of the deadlines established under Insurance Code §2210.573(b) and (d) will be subject to judicial review under Insurance Code Chapter 36.

Under Government Code §2001.034, this emergency rule will not be in effect for longer than 120 days, unless TDI renews it for an additional 60 days as allowed by Government Code §2001.034(c). TDI intends to propose this or a similar rule under the normal rulemaking process as provided in Government Code §2001.023 and §2001.029, and all interested parties will have the opportunity to comment on those rules when they are proposed.

STATUTORY AUTHORITY. New §5.4203 is adopted on an emergency basis with an immediate effective date, under Insurance Code §§36.001, 2210.008, and 2210.581 and Government Code §2001.034 and §2001.036(a)(2).

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Insurance Code §2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Insurance Code §2210.581 authorizes the commissioner to extend deadlines established under Subchapter L-1 by rule.

Government Code §2001.034 authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency "finds that an imminent peril to the public health, safety, or welfare" requires the adoption of rules on fewer than 30 days' notice.

Government Code §2001.036(a)(2) provides for a rule to be effective immediately on filing with the secretary of state if an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare.

CROSS-REFERENCE TO STATUTE. Section 5.4203 implements Insurance Code §2210.581.

TEXT.

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

28 TAC §5.4203

§5.4203. Good Cause Extensions under Insurance Code §2210.573(b) and (d).

(a) This section defines good cause for the purpose of extending the deadlines in Insurance Code §2210.573(b) and (d), relating to the association's request for claim-related information and the association's acceptance or denial of a claim, respectively. In this section, good cause means objective facts beyond the association's control that reasonably caused or may cause the association to fail to meet a deadline in Insurance Code §2210.573(b) or (d).

(b) If the association shows good cause, or if the commissioner, in the absence of a request, determines good cause exists, the commissioner may extend the deadlines established under Insurance Code §2210.573(b) and (d). An extension granted under this section is effective on the date of the deadline for which it is granted. An extension is limited to the claims for which it is granted.

(c) A request for an extension under this section must:

(1) be sent in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department);

(2) specify the deadline or deadlines for which an extension is requested;

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- (3) identify the claims for which an extension is requested by:
- (A) the type of policy; and
 - (B) the time period and a description of the event that gave rise to the claims;
- (4) specify the association's estimated total number of claims arising from the event that gave rise to the claims for which an extension is requested; and
- (5) describe the good cause for which the association cannot meet the deadlines in Insurance Code §2210.573(b) and (d).

(d) In addition to the information described in subsection (c) of this section, the commissioner may use any other information the commissioner deems appropriate when determining if good cause exists to extend the deadlines in Insurance Code §2210.573(b) and (d).

(e) With reference to claims filed during a particular catastrophe year, extensions under this section and any other extension granted under Insurance Code §2210.581, relating to the extension of claim-handling deadlines, may not exceed 120 days in the aggregate.

CERTIFICATION. This agency certifies that legal counsel has reviewed this rule and its emergency adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 21, 2017.



Norma Garcia
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Texas Department of Insurance

New 28 TAC §5.4203 is adopted on an emergency basis, effective immediately.



Mark Einfalt
Deputy Commissioner for Compliance
Texas Department of Insurance
Delegation Order 4506

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